

Gross receipts mean all the consideration actually received by the seller, except traded-in tangible personal property. See 86 Ill. Adm. Code 130.401. (This is a GIL).

March 6, 2003

Dear Xxxxx:

This letter is in response to your letter dated August 26, 2002 and various telephone conversations. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

This correspondence is respectfully submitted on behalf of my client and is intended to seek a General Information Letter, to obtain clarification and general information pursuant to 2 Ill. Adm. Code 1200.120(b) and (c).

Under General Information Letter, ST 94-0422, the Illinois Department of Revenue provided the following general information with respect to the tax treatment of commissions or incentives paid to dealerships on factory employee new vehicle purchase plans, to wit:

'If a seller receives a reimbursement or rebate for a discount, the amount of that reimbursement or rebate is considered part of the gross receipts received by the seller. This amount is fully taxable. An example is where a car dealer sells a vehicle for \$15,000 with a \$1,000 discount (with rebate or reimbursement). The purchaser pays \$14,000 to the dealer and the dealer receives \$1,000 from the manufacturer. In this example, the dealer's total gross receipts of \$15,000 are subject to Retailers' Occupation Tax. If a seller provides a discount to a purchaser and does not receive a reimbursement or rebate for that discount, only the (discounted) amount received by the seller is taxable. An example is where a car dealer sells a vehicle for \$15,000 with a \$1,000 discount (without rebate or reimbursement). The purchaser pays \$14,000 to the dealer and the dealer receives no other consideration from any other source. In this example, the dealer's total gross receipts of \$14,000 are subject to Retailers' Occupation Tax.' IDOR General Information Letter, ST 94-0422

Please clarify whether the general information outlined in ST 94-0422 constitutes the current position of the Department as to the tax treatment of discounts to dealerships on factory employee new vehicle purchase plans, and/ or credits paid to dealerships pursuant to supplier employee new vehicle purchase programs. Also, please clarify how the tax would be calculated in instances such as, for example, where a dealer might sell a certain threshold number of vehicles to program eligible participants over time, and subsequently receives an allowance or credit based on sales volume to such participants (i.e., dealer sells 50 new vehicles over time to 50 separate program eligible participants, and subsequently receives a credit from the factory based upon number of vehicles sold to program participants.) Please indicate whether the allowance or credit received by the dealer is includable in gross receipts for the purpose of calculating the tax on purchases by the eligible participants, and if so, how the tax would be computed in any 1 of the 50 transactions.

Finally, please consider the following manufacturer program parameters and confirm the tax treatment of the allowance. A certain manufacturer's factory employee purchase program provides a special vehicle price to program participants who might include, factory employees, retirees, surviving spouses and eligible family members, when an eligible vehicle is purchased from a participating dealer, at the manufacturer-prescribed prices. A vehicle may be ordered for the program participant who pays a selling price, as dictated by the manufacturer, of the invoice total for the vehicle. A vehicle may also be purchased out of stock in which instance the participant pays a sale price which is a specified amount displayed on the vehicle invoice for this retail stock unit. An allowance of a specified percentage of MSRP of the base vehicle and factory installed equipment (excluding destination and handling charges) is paid by the manufacturer to the participating dealer, provided the dealer delivered the vehicle to an eligible participant according to program parameters. This allowance may be realized by the dealer in the form of a credit. Please clarify under this scenario, whether the allowance received by the dealer is includable in gross receipts for the purpose of calculating the tax on the vehicle purchase by the eligible participant. In other words, please identify the 'total selling price' as prescribed by 35 ILCS 120/1 where, for example, the program eligible participant pays a dealer for a vehicle a predetermined price of \$26,000, and the dealer subsequently receives a credit from the manufacturer in the amount of 5% of the vehicle's MSRP or \$1,350.

Thank you in advance for your consideration. If you have any questions, feel free to contact my office.

DEPARTMENT'S RESPONSE:

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is based on the amount of gross receipts received by the retailer on the sale of that property. "Gross receipts" means all the consideration actually received by the seller, except traded-in tangible personal property. See 86 Ill. Adm. Code 130.401.

Since we have been unable to obtain copies of the factory employee new vehicle purchase plans described in your letter, we cannot provide a specific answer regarding the taxability the

“allowances or credit” provided to the dealers under those plans. However, we can provide you with some general guidelines that may be of assistance.

If a factory employee new vehicle purchase plan provides for a payment to a dealer in a manner similar to a factory rebate or reimbursement, the amount of that reimbursement or rebate is considered part of the gross receipts received by those sellers and is fully taxable. If retailers offer discounted prices for items and do not receive any reimbursement or rebate for those discounts, the lower amounts received for those items would be the retailers' gross receipts for those sales. The retailers would incur Retailers' Occupation Tax on those lower amounts and the purchasers would pay the corresponding Use Tax to the retailers based upon those same amounts. See for example 86 Ill. Adm. Code 130.2125 regarding trading stamps and discount coupons.

Rebates from suppliers must be distinguished from situations in which retailers receive discounts from suppliers and pass those discounts on to customers. In the latter instance, the gross receipts subject to tax will include only those amounts received by the retailer from customers. See subsection (b)(2)(B) of Section 130.2125. Without reviewing the terms of the factory employee new vehicle purchase plans, we cannot determine if the allowances or credits provided under those plans are analogous to factory rebates or factory discounts.

The Department is currently in litigation regarding what may be a plan similar to the ones you have referenced in your letter. You may wish to track the progress of the following case: Ogden Chrysler Plymouth v. Bower et al, 01-MR-1000 18th Judicial Circuit, DuPage County.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk